UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY,	§	
	§	
AND CRYSTAL EXPLORATION AND	§	
PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
	§	
Plaintiffs	§	JUDGE TOM STAGG
	§	
v.	§	MAGISTRATE JUDGE PAYNE
	§	
ATLANTIC RICHFIELD COMPANY,	§	
	§	
Defendant	§	

APPEAL OF CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY FROM MEMORANDUM RULING CONCERNING TRANSFER OF CONTRACT RELEASE CLAIM AND CERCLA COUNTER-CLAIM TO COLORADO

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On July 19, 1996, Magistrate Judge Payne signed a Memorandum Ruling resulting in two orders: (1) an Order of Severance and Referral to Bankruptcy Court ("Order of Reference") and (2) an Order of Transfer. Pursuant to Local Rule 19.09W, Crystal Oil Company ("Crystal") and Crystal Exploration and Production Co. ("CEPCO") hereby appeal from the Order of Transfer and as much of the Memorandum Ruling which supports the Order of Transfer.

FACTS

The Order of Reference severed and referred to the Bankruptcy Court the claim Crystal had brought before this Court in its Complaint, alleging that the claim that ARCO asserts against Crystal for environmental clean up at the Rico, Colorado mine (the "CERCLA Claim") was

discharged in Crystal's 1986 bankruptcy case and that ARCO is enjoined from pursuing that claim against Crystal under § 524 of the Bankruptcy Code (the "Bankruptcy Discharge Claim").

The Order of Transfer would transfer the remainder of this lawsuit to the District of Colorado, apparently including: (a) the claim CEPCO had brought before this Court in its Complaint, alleging that ARCO had released any environmental clean up claim concerning the Rico, Colorado mine when it purchased that mine from CEPCO (the "Contract Release Claim") and (b) ARCO's counterclaim asserting that both Crystal and CEPCO are jointly and severally liable to ARCO for clean up of the RICO mine (the "CERCLA Counter-Claim").

CEPCO has now filed a summary judgment motion on the Contract Release Claim in this Court; simultaneously Crystal has filed a summary judgment motion on the Bankruptcy Discharge Claim in the Bankruptcy Court.

SUMMARY OF ARGUMENT

Crystal and CEPCO agree with the Memorandum's conclusion that the Bankruptcy Discharge Claim should be heard by the Bankruptcy Court which presided over Crystal's bankruptcy case (1) because of the importance of the Bankruptcy Discharge issue to the fair administration of the bankruptcy laws and fair treatment of creditors in Crystal's bankruptcy case and (2) because the Bankruptcy Court is already deciding this same issue as to two agencies of the Louisiana State Government.

Moreover, Crystal and CEPCO agree with the Memorandum's statement that CEPCO can best obtain prompt threshold determination of the Contract Release Claim by presenting a motion for summary judgment. CEPCO has now filed a summary judgment in this Court on the Contract Release Claim and Crystal has also filed a summary judgment in the Bankruptcy

Court on the Bankruptcy Discharge Claim. Now both the Bankruptcy Discharge Claim (as to Crystal) and the Contract Release Claim (as to CEPCO) are presented for summary decision in the Western District of Louisiana.

However, Crystal and CEPCO respectfully submit that there are clear errors in the Memorandum with respect to the Order of Transfer. Sending both the Contract Release Claim (which only pertains to CEPCO) and the CERCLA Claim (which pertains to both Crystal and CEPCO) to the District of Colorado, would undercut a number of the valid reasons for referring the Bankruptcy Discharge Issue to the Bankruptcy Court and would create duplicative litigation in two courts with the attendant risks of inconsistent rulings and interference between the courts, and the certainty of inefficiency and increased burden on the parties.

Finally, the Memorandum makes clear error in (1) finding that nothing of importance happened in this District concerning the Contract Release Issue, so as to justify giving little or no deference to plaintiffs' choice of forum; (2) finding that ARCO has met its burden of identifying specific key witnesses (and their anticipated testimony) in the desired transferee district, to support transfer of venue; and (3) accepting ARCO's wholly unsupported claim that it cannot obtain jurisdiction in this District over additional parties that it wants to add to what it has previously told this Court was a compulsory counter-claim.

I. Interests of Justice

As to the Bankruptcy Discharge Issue, the Memorandum correctly reasons that "the interests of justice outweigh any private interests." Memorandum at p. 14. "Important legal and policy considerations weigh in favor of the Bankruptcy Court resolving the Discharge Claims." Memorandum at p. 13. "Whether a creditor's claim has been discharged touches upon

legal and policy considerations that strike at the heart of bankruptcy law." Memorandum at p. 10. It is important to avoid "inconsistent" results on the issue of what claims have been discharged because of its effect on "equality of treatment among creditors." Memorandum at p. 8. Consistency of results can be best achieved by "centralizing" adjudication of the "legal issue of whether the claims [of ARCO and two Louisiana State agencies that are already before the Bankruptcy Court] are subject to discharge" in the Bankruptcy Court which "is intimately familiar with the debtors plan of reorganization and is commonly required to confront the legal issue presented (the scope of the discharge order, and whether it applies to a particular creditor's claim)." Memorandum at pp. 9-10.

In proposing transfer to Colorado of the Contract Release Claim and the CERCLA Counter-Claim, the Memorandum commits clear error, however, in assuming that after transfer those claims will be handled in a way that will not interfere with the Louisiana Bankruptcy Court's decision of the Bankruptcy Discharge Claim and in an efficient sequence. The Memorandum assumed that the two claims proposed to be transferred to Colorado (CEPCO's Contract Release Claim against ARCO and ARCO's CERCLA Counter-Claim against both Crystal and CEPCO) will not go forward, unless and until Crystal loses on the Bankruptcy Discharge Claim.

> Presumably the action transferred to Colorado will proceed to the merits only if the Bankruptcy Court determines that ARCO's claims have not been discharged.

Memorandum at p. 13.[1/] This assumption is clear error. While it might make sense to schedule things this way, this is not required by either the Order of Reference or the Order of Transfer, and this is not how ARCO wishes to proceed. ARCO wishes to proceed promptly with its CERCLA Counter-Claim against both Crystal and CEPCO. If ARCO persuades the District Court in Colorado to proceed with the CERCLA Counter-Claim against Crystal before decision on the Bankruptcy Discharge Claim, this would plainly interfere with the Bankruptcy Court's resolution of that Claim.

Crystal could try to control this interference by seeking a preliminary injunction under § 524 of the Bankruptcy Code enjoining ARCO from prosecuting the CERCLA Counter-Claim. The summary judgment evidence currently on file with the Bankruptcy Court is more than sufficient to support such a preliminary injunction. That evidence presents an extremely high likelihood of success on the claim that the CERCLA Counter-Claim was discharged in Crystal's 1986 Bankruptcy Case. Crystal and the Bankruptcy Court ought not be put to that burden, however. This Court can obviate the need for any such preliminary injunction procedure simply by reserving decision on ARCO's motion to transfer venue until the Bankruptcy Discharge Issue has been resolved.

Contrary to what the Memorandum assumes, the Contract Release Claim is not an "alternative" to the Bankruptcy Discharge Claim,[2/] but rather is the counterpart for CEPCO to the Bankruptcy Discharge Claim for Crystal. Section 524 of the Bankruptcy Code enjoins a person from asserting against a former debtor a claim that has been discharged. By its nature,

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[1/]The memorandum repeats this concept [three] more times.

[2/] Memorandum at p. 1.

§ 524 thus entitles the person asserting a discharge defense to a threshold determination of discharge before it is put to burdensome defense of a claim. *See, e.g., Local Loan v. Hunt*, 292 U.S. 234 (1934); *Helms v. Holmes*, 129 F.2d 263, 273 (4th Cir. 1942).

Similarly, the Contract Release Claim provides a basis for threshold determination of CEPCO's liability on a complicated CERCLA Counter-Claim before CEPCO is put to burdensome defense of the claim. The Court should decide this issue first because it could led to an efficient determination of a case. *O'Malley v. U.S. Fid. & Guar. Co.*, 776 F.2d 494, 499 (5th Cir. 1985); *Ellengson Timber Co. v. Great Northern Ry. Co.*, 424 F.2d 497 (9th Cir.), *cert. denied*, 400 U.S. 957 (1970) ("one of the purposes of Rule 42(b) is to permit deferral of costly and possibly unnecessary discovery proceedings pending resolution of potentially dispositive preliminary issues"); *South Hampton Ref. Co. v. National Union Life Ins. Co.*, 875 F. Supp. 382, 384 (E.D. Tex. 1995).

There can be no justification for transferring any part of this case to another district before the Contract Release Claim has been determined. It would be grossly unfair to CEPCO and grossly inefficient to put CEPCO to the burden of defending protracted and expensive CERCLA claim without first determining the clear cut issue of whether CEPCO has already been contractually released from that claim. This issue is presented squarely by the Complaint and in CEPCO's motion for summary judgment. As stated by the Memorandum, CEPCO's motion for summary judgment on the Contract Claim can be decided as well by this Court as any other. Memorandum at 16, fn 5.

II. **Deference to Plaintiffs' Choice of Forum**

A plaintiff's forum choice is "highly esteemed" and accorded substantial weight, especially when, as here, the plaintiff brings its cause of action in its home forum, and the cause of action has a significant connection to that forum. *Peteet v. Dow Chem. Co.*, 868 F.2d 1428, 1436 (5th Cir.), *cert. denied*, 493 U.S. 935 (1989); *Menendez Rodriguez v. Pan Am. Life Ins. Co.*, 311 F.2d 429, 432 (5th Cir. 1962), *vacated on other grounds*, 376 U.S. 779 (1965); *see also Schutte v. Amoco Steel*, 431 F.2d 22, 24 (3d Cir. 1970), *cert. denied*, 401 U.S. 910 (1971). Courts should not disturb a plaintiff's forum choice absent a clear and convincing showing by the movant that the balance of convenience strongly favors an alternate forum. *Schutte*, 431 F.2d at 25; *Ayers v. Arabian Am. Oil Co.*, 571 F. Supp. 707, 709 (S.D.N.Y. 1983).

The Memorandum states that the "plaintiff's choice of forum is entitled to less deference when none of the facts involved in the underlying dispute occurred in that district," citing *Robinson v. Madison*, 752 F. Supp. 842, 847 (N.D. Ill. 1990); *Am. Tel. & Tel. Co. v. MCI Communications*, 736 F. Supp. 1294, 1306 (D.N.J. 1990). But these cases do not apply here because the Memorandum's fact premise invoking them is clearly erroneous.

The Memorandum commits clear error when it lumps together discussion of the Contract Release claim and the CERCLA Counter-Claim and concludes that plaintiffs' choice of forum is entitled to no or little defense because "the clean up controversy has little meaningful connection to Louisiana." Memorandum at p. 15.

> Were it established that ARCO's claims were not discharged, the remainder of the case (CEPCO's declaratory judgment claim on the contract and ARCO's CERCLA damage claim) presents entirely different considerations which warrant a separate assessment under § 1404(2). Simply put, it is a Colorado-based controversy, largely involving Colorado

> witnesses, Colorado evidence, some aspects of Colorado law and strong Colorado interests. Other than the fact that Crystal maintains its principal place of business in this district, the clean-up controversy has little meaningful connection to Louisiana.

Memorandum at pp. 14-15.

In fact, the Contract Release Claim is distinct from ARCO's CERCLA Counter-Claim. It turns solely on the interpretation of a contract in which ARCO plainly releases Crystal from any liability for clean up of the RICO mine. No extrinsic evidence is needed to prove the release and, once the release is proved, ARCO has no CERCLA Counter-Claim against CEPCO.[3/]

More significantly, the Contract Release Claim is not a "controversy that has little meaningful connection to Louisiana." The Purchase Agreement, which is before this Court as part of the venue filings by plaintiffs and defendant, shows on its face that Crystal executed it in Caddo Parish, Louisiana. Indeed, the testimony of Doug Johnson, in-house attorney for ARCO who drafted the contract, and who was presented for deposition as ARCO's corporate representative, is that ARCO businessmen took his draft of the contract, flew to Louisiana, and obtained CEPCO's signatures on it. *See* Deposition of Doug Johnson, attached hereto as Exhibit A. ARCO thus traveled to Shreveport and there obtained signatures on behalf of CEPCO agreeing to the contract for sale of the Rico Mine. Thus, the negotiation and execution of the contract, upon which the Contract Release Claim turns, are significantly connected to this forum

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[3/] If extrinsic evidence is admitted on the Contract Release Claim, the evidence attached to CEPCO's summary judgment motion shows conclusively that ARCO knew it was buying an old mine from CEPCO where approximately $15 million of clean up would be required, and consciously decided to assume the clean-up responsibility because it believed it might find valuable molybdenum there. ARCO knew very explicitly what it was doing when it signed the contracts containing this release.

and there is no justification for disregarding the general rule of deference to plaintiffs' choice of forum.

III. **ARCO's Failure To Meet Its Burden**

The Memorandum is clearly erroneous in concluding that ARCO has met the required burden to demonstrate convenience of the parties sufficient to overcome CEPCO's choice of forum for adjudication of its Contract Release Claim. Memorandum at pp. 15-16.

When a party seeks to transfer venue on the basis of witnesses' convenience, it is the burden of the movant to name the key witnesses who will be appearing and to describe their anticipated testimony with specificity so that the court can measure the inconvenience caused by locating a lawsuit in a particular forum. *Factors, Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215, 218 (2d Cir. 1978), *cert. denied*, 440 U.S. 908 (1979); *see also Marbury-Pattillo Const. Co., Inc. v. Bayside Warehouse Co.*, 490 F.2d 155 (5th Cir. 1974), at 158. "If the moving party merely makes a general allegation that witnesses will be necessary, without identifying those necessary witnesses and indicating what their testimony at trial will be, the motion to transfer based on convenience of witnesses will be denied." *Factors, Etc.*, 579 F.2d at 218 (emphasis added); *Palm Tree, Inc. v. Stockment*, 488 F.2d 754, 756-57 (3d Cir. 1973); *Texas Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 148 (10th Cir. 1967); *Crawford & Co. v. Temple Drilling Co.*, 655 F. Supp. 279, 281 (M.D. La. 1987); *Clark v. Moran Towing & Trans. Co.*, Inc., 738 F. Supp. 1023, 1031-31 (E.D. La. 1990).

ARCO did not meet this standard. Rather it took a shot-gun approach of naming 52 "potential witnesses," many of whom (but not all) live in Colorado. Moreover, ARCO has not described these "potential witnesses'" testimony, but rather has described general subject matters

about which they might testify. ARCO's superficial effort simply does not meet the legal standard to identify key witnesses and describe their testimony. Broad assertions of witness inconvenience cannot support transfer. *Factors, Etc.*, 579 F.2d at 281; *Riso Kagako Corp. v. A. B. Dick Co.*, 300 F. Supp. 1007, 1010 (S.D.N.Y. 1969) (noting that primary element of adequate transfer motions is submission of an affidavit which details names and locations of potential witnesses and the substance of their testimony).

IV. Personal Jurisdiction Concerning The CERCLA Counter-Claim

Finally, the Memorandum commits clear error by accepting ARCO's unsupported assertion that it cannot obtain jurisdiction in Louisiana over other parties it might want to add to its CERCLA Claims, and that it is, therefore, in the interest of justice to transfer the CERCLA Claim and the Contract Release Claim to Colorado where it will allegedly be easier to add parties. Memorandum at pp. 17-18. This finding ignores the fact that Crystal and CEPCO presented to this Court in their Complaint two focused issues that would relieve them of any CERCLA liability to ARCO—that Crystal was discharged and that CEPCO was contractually released from such liability. ARCO then filed a counterclaim asserting CERCLA liability against both Crystal and CEPCO, and sought to use it as an excuse to transfer all the issues in this case to Colorado. Virtually all of ARCO's arguments for venue transfer are based on the CERCLA Counter-Claim that ARCO chose to bring into this case.

ARCO brought its CERCLA Counter-Claim, it asserted that "this Court has subject matter jurisdiction of this Counter-Claim as it is a compulsory Counter-Claim under Rule 13(a) of the Federal Rules of Civil Procedure and falls under this Court's ancillary jurisdiction."

Counter-Claim ¶ 2. Indeed, this is the only jurisdictional allegation ARCO made for this Counter-Claim.

ARCO was presumably aware that it is inappropriate to base venue transfer on a counterclaim that a party brings voluntarily into a case. 6 Wright, Miller & Kane, *Federal Practice & Procedure* § 1424 at 186 (West 1990 & Supp. 1996) (by interposing a claim for relief, defendant has waived the right to object to venue of the action) (citing *North Branch Prod., Inc. v. Fisher*, 179 F. Supp. 843, 846 (D.D.C.), *rev'd on other grounds*, 284 F.2d 611 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 827 (1961); *Noerr Motor Freight, Inc. v. Eastern R.R. President*, 155 F. Supp. 768, 838 (E.D. Pa. 1957), *aff'd*, 273 F.2d 218 (3d Cir. 1959), *rev'd on other grounds*, 365 U.S. 127 (1961); *see also Star Brite Dist., Inc. v. Gavin*, 746 F. Supp. 633, 636 (E.D. Miss. 1990) (party who asserts a permissive counterclaim need not challenge venue because it can voluntarily dismiss its claims and re-file in a more convenient forum).

But a compulsory counter-claim is one which by definition "does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Fed. R. Civ. P. 13(a). Having called its CERCLA Counter-Claim "compulsory" in order to have an excuse to rely on it for venue transfer, ARCO should not be heard to argue that there is now some party that it needs to join to this Counter-Claim for just adjudication over whom this Court cannot acquire obtain jurisdiction.

ARCO's complicated CERCLA Counter-Claim was brought in this Court in Louisiana to create a complicated-looking excuse to transfer venue of two straight forward issues (Bankruptcy Discharge and Contract Release) away from where they happened. As ARCO lost faith in its ability to prevail on this excuse, it created a new one—it was allegedly unfairly being

restrained from making its CERCLA case even more complicated by bringing in other parties who were not subject to jurisdiction in Louisiana. ARCO's attempts to expand and complicate this case should not be permitted to obscure the clear issues presented.

ARCO desires to avoid having the Federal Courts of the Western District of Louisiana decide two straight forward issues—was Crystal discharged from ARCO's CERCLA Counter-Claim by its 1986 bankruptcy and was CEPCO released from ARCO's CERCLA Counter-Claim by the contract ARCO brought to Shreveport, Louisiana for CEPCO to sign. Both of these issues are now before the Courts of this District on motions for summary judgment and can, and should, be decided by the courts of this District.

RECORD

Plaintiffs identify and ask the Court to consider the following filings as pertinent to this appeal:

1. Memorandum in Support of Defendant's Motion to Transfer Case to the United States District Court for the District of Colorado, March 6, 1996.

2. Plaintiffs' Memorandum in Opposition to Defendant's Motion to Transfer Venue, April 8, 1996.

3. Reply Memorandum in Support of Defendant's Motion to Transfer Case to the United States District Court for the District of Colorado, April 19, 1996.

4. Plaintiffs' Supplemental Memorandum in Opposition to Defendant's Motion to Transfer Venue, April 29, 1996.

5. Final Reply Memorandum in Support of Defendant's Motion to Transfer Case to the United States District Court for the District of Colorado, May 3, 1996.

CONCLUSION AND PRAYER FOR RELIEF

This Court should reverse the Order of Transfer and should keep control of (1) CEPCO's Contract Release Claim (which it can decide on summary judgment either simultaneously with, or after, the Bankruptcy Court rules on the Bankruptcy Discharge Claim) and (2) ARCO's CERCLA Counter-Claim (which it can hold in abeyance while the Bankruptcy Discharge Claim and the Contract Release Claim are decided), then consider transferring to Colorado whatever remains of this case.

FULBRIGHT & JAWORSKI L.L.P.

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ATTORNEYS FOR PLAINTIFFS, CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 29th day of July, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

1. M. W. Michael Adams
   Blanchard, Walker, O'Quin & Roberts
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   Shreveport, Louisiana 71163-1126

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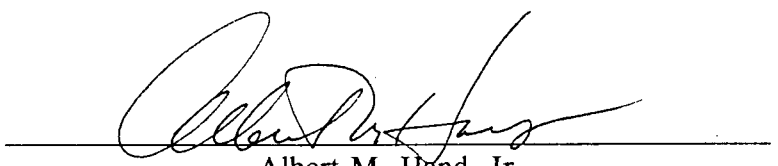

Albert M. Hand, Jr

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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CRYSTAL OIL COMPANY,	§	
	§	
AND CRYSTAL EXPLORATION AND	§	
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v.	§	MAGISTRATE JUDGE PAYNE
	§	
ATLANTIC RICHFIELD COMPANY,	§	
	§	
Defendant	§	

EXHIBIT "A"

EXCERPT FROM DEPOSITION TESTIMONY
OF DOUGLAS V. JOHNSON

IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,

Plaintiffs,

vs.

ATLANTIC RICHFIELD COMPANY,

Defendant.

No. CV 95-2115S

COPY

Deposition Upon Oral Examination

of

DOUGLAS V. JOHNSON - Volume I

Taken at 15920 Valley Highway
Tukwila, Washington

DATE: June 19, 1996

REPORTED BY: Linda A. Owen, CSR
CSR No.: OW-EN-*L-A375CB

PATRICE STARKOVICH
REPORTING SERVICES
(206) 323-0919

reviewed it.

Q. Let me back up then to the Purchase Agreement, Exhibit 3. You indicated you prepared it. Were you also in on the negotiation of the agreement?

A. No.

Q. Was there any negotiation?

A. I frankly don't know. I know that in the spring of 1980 there had to have been a lot of conversations between my clients and someone from Crystal, because some very significant changes were made vis-a-vis the 1978 Option Agreement. The people at Anaconda talked for several months about this possible transaction and made all kinds of changes and behaved as if they expected them to be acceptable to Crystal. There were a couple of meetings that I remember attending in the winter or spring of 1980, relatively brief, perhaps a couple hours, at which various issues and options were discussed.

And then one morning, probably not very long before June 17, the two groups that were primarily involved in this, which was kind of the exploration and geology and the land department, asked me to prepare a form of a purchase and sale agreement, and I prepared this. This document probably went through two, or possibly three, drafts working with the clients, and two of them went to Shreveport to meet with someone at Crystal

to discuss it. This was intended as kind of a draft for discussion purposes, and I was amazed when they came back with it dated and signed.

Q. Who were the two people?

A. The land manager for Anaconda, Jerry Rupp, and the manager for domestic metals exploration, John Wilson, are the two people that I recall going. It may be that I've got that mixed up and one of their subordinates went, or maybe more than two people went, but they're the two people I remember talking to about this after this was signed.

Q. Is the last name spelled R-U-P-P for Jerry Rupp?

A. Right.

Q. Again, his position was?

A. He was the land manager.

Q. And John Wilson's position was what?

A. Manager domestic metals exploration.

Q. You spoke of meetings in the winter or spring of 1980 concerning this transaction. Where and with whom were those meetings?

A. There was not a lot of input from the legal department or involvement by the legal department with respect to Rico during that period of time. What was going on was consideration of whether or not Anaconda should either exercise its option at some point or perhaps

embark upon the kind of transaction that ultimately is reflected in this Letter Agreement.

There would tend to be meetings involving several different levels of personnel from different parts of the company, kind of in the nature of half briefing, half discussion, question and answer kind of a thing. But they were formal meetings. You would get something, perhaps an agenda, and there would be a distribution list on the front. I mean there would be 22 names on it. And as the lawyer in the exploration group, for some reason somebody picked me, and maybe one of those notices went to somebody else and they were out of town, but I remember going to a couple of those meetings. I remember attending them.

Q. When you say "a couple," as you recall were there two meetings you attended?

A. There might have been three, but my point is that there were not a lot of meetings attended, certainly.

Q. Your best recollection is two or three; is that right?

A. Right.

Q. Were these meetings all internally at Anaconda?

A. Yes.

Q. These were not meetings with Crystal Representatives?

for the lawyers to initial a signature block before a management person signs a contract, and they call it approval as to form by the lawyer. Are you familiar with the procedure I'm talking about?

A. Yes.

Q. Was there any such procedure within Anaconda at that time?

A. Yes, a very rigid one.

Q. Were you called upon to form approve this contract?

A. Yes.

Q. Did you do so?

A. I'm sure I did, because I did -- I would have approved all of the closing documents. Anaconda had a procedure that is different than the ARCO procedure. You may remember that at this time the Anaconda and ARCO marriage had just started within the last couple years, and the corporate cultures are different, and even some of the legal department procedures are different. At ARCO now I still initial every once in a while -- but a lot of things I don't initial them anymore because I don't have time to read them. I tell them it's a business decision. But if I do, I initial the document that gets signed.

At Anaconda there was an entirely separate document which is exactly like this document but with no

signatures on it. There is a gigantic rubber stamp that says "approval copy." The land department is responsible for doing this. They slap the approval copy on the front page, and they go back to the back page, and they then decide, based upon some procedure that I don't understand, whose initials need to be on the final document, and then they use either -- this is more bizarre Anaconda stuff. They use either little boxes about three-quarters of an inch square or big rubber stamps with a signature line, and it varies from document to document, for reasons I never understood, and there would be usually at least four sets of initials, and sometimes more, on a document.

There would be a legal box. There would be a terms box for the land department which cared about some of the terms, particularly administrative terms, notice addresses and how the rental and royalty payments were going to be made in a mining lease, for example. There would be terms for the geologist, someone like John Wilson to approve things like the royalty rate. There would be a separate box called description were the land manager might approve the terms. The land man who worked the deal would approve that the description on the attached exhibit was the right mining claims. Then they would add additional boxes for the finance group if there was a capital expense involved. You could easily end up with

six different signatures or little boxes for initials on a single document.

And I have to tell you that one of the biggest problems with this Exhibit No. 3 was that there was no approval copy, and when they brought this back from Shreveport signed, we had to hustle around, create an approval copy and get everyone to initial it before Art Barber would sign this. I distinctly remember that, just because it was a real problem.

Q. So when it came back from Shreveport, it was only signed by Crystal?

A. Right.

Q. And then the Anaconda signature was applied later?

A. That's correct.

Q. Let me ask you about that, because I was curious about this. I notice the notary, the acknowledgments here at the end, are both dated the same day, June 17, 1980, but one reflects an acknowledgment in Caddo Parish, Louisiana and the other in the City and County of Denver. Do you know how that -- can you explain that?

A. No, I can't, and I can't tell you whether or not it was actually executed on the 17th of June, even though that's what the notary says. I remember we did it in a hell of a hurry, but I don't know if we did it the same

day.

Q. But your best recollection is it came back from Shreveport signed by CEPCO, and then there had to be some procedures followed, some approvals secured, before it was executed by Anaconda, on behalf of Anaconda?

A. That's correct.

Q. Coming back to the Closing Agreement, did I understand you to say -- you gave a lot of explanation, but as a bottom line, did you form approve the Closing Agreement?

A. Without the approval copy, I can't positively state that I did, but I can tell you my best recollection, 16 years later, is that there was a pile of closing documents and that I was the lawyer responsible for all of them. And based on that, I have to guess that I would have been the one who approved every one of them.

Q. And if we go to the -- if somebody goes back to a file deep enough in the archives, we can probably retrieve that approval copy; is that correct? Or do you have any knowledge of that?

A. I would expect that approval copies would have been retained in the land department, because they were -- at least with these kinds of transactions, they were the ones that always initiated them and sort of stewarded the document on its rounds and got the final signature of

C E R T I F I C A T E

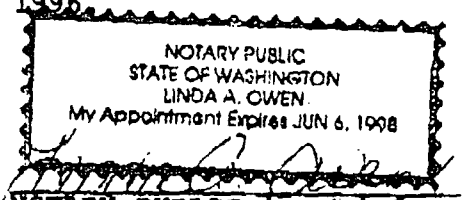
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned officer of the Court, under my commission as a Notary Public in and for the State of Washington, hereby certify that the foregoing deposition upon oral examination of the witness named herein was taken stenographically before me and thereafter transcribed under my direction;

That the witness before examination was first duly sworn by me to testify truthfully; that the transcript of the deposition is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for, nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of July 1996.



NOTARY PUBLIC in and for the State of Washington, residing at Redmond.
My commission expires June 6, 1998.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CASE NO: 5:95CV2115

JUDGE STAGG
MAGISTRATE JUDGE PAYNE

CASE TITLE: CRYSTAL OIL CO ET AL VS ATLANTIC RICHFIELD CO

NOTICE OF SETTING OF MOTION

I. SETTING

Please take notice that the **appeal from memorandum ruling concerning transfer of contract release claim and CERCLA counter-claim to Colorado** filed by **Crystal Oil Co and Crystal Exploration and Production Co** on **July 29, 1996** will be considered on the Honorable Tom Stagg's next regular motion date which is **September 20, 1996**.

II. Please be advised that the court's regular practice is to rule on the motion on the basis of the written briefs only. Unless additional time is granted, the court will issue a written ruling after time delays have run. An effort will be made to rule by the end of the month in which the motion is set.

III. BRIEFS IN OPPOSITION

If the respondent opposes a motion, the response must be filed within fifteen (15) days after service of the motion. The movant will have 5 days after service of the response within which to file a rebuttal brief that is limited SOLELY to matters raised by the opposition. ADDITIONAL BRIEFS SHALL NOT BE FILED unless leave of court, upon good cause shown, is first obtained. Computation of the time limits set forth above is governed by Fed. R. Civ. P. 6(a) and (e).

IV. FILING, COURTESY COPY

The original responses and briefs should be mailed to Clerk of Court, 300 Fannin Street, Suite 1167, Shreveport, LA 71101-3083, for filing AND A COPY OF ALL RESPONSES AND BRIEFS SHOULD BE MAILED TO Judge Tom Stagg, U. S. District Judge, 300 Fannin Street, Suite 4100, Shreveport, LA 71101-3091.

DATED AND SIGNED at Shreveport, Louisiana, on July 30, 1996.

ROBERT H. SHEMWELL, Clerk of Court

By: _____
Deputy Clerk

COPY SENT:
DATE: July 30, 1996
BY: om
TO: Stagg, Terry and
Dykes, Hand, Adams, Freeman, Milner